IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7063 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JAI CHAMUNDA TILES - Petitioner(s)
Versus
ADDL.CHIEF SECRETARY (APPEALS) & 1 - Respondent(s)

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Appearance :
MR JAGDISH MEHTA for Petitioner(s) : 1,
MR LR PUJARI, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/04/2007

ORAL JUDGMENT

1. Shri Jagdish Mehta, learned counsel for the petitioner; Shri L.R.Pujari, learned AGP for the respondents. Heard.

2. The short facts necessary for disposal of the present writ application are that on an application by the petitioner to establish Roof Tiles Industry, the State Government, vide order dated 16.1.80 allotted a chunk of land to the petitioner at the rate of Rs.150/- per sq.mt. and certain conditions relating to allotment were agreed between the parties which are shown in Annexure:A.

3. Condition no. 7 clearly provides that land has been allotted for tiles industry, the land would not be used for any other purpose without the permission of the Collector. Condition no. 8 clearly provides that the land use would not be changed for any other purpose or with anybody without the permission of the Collector. Terms also provided that in case, the petitioner commits any breach of the conditions, then, under condition no.23, allotment would stand cancelled and the land would be resumed by the Government.

4. On 17.1.94, the Collector, Rajkot issued a notice [Jamin-2-Morbi-File No. 103-180] to the

petitioner to show cause that in view of the breaches committed by him, why action be not taken against him, allotment be not cancelled and the land be not forfeited. The show cause notice also provided that the petitioner should show cause that why land be not forfeited with or without fine.

5. The petitioner, vide his reply [Annexure:B] submitted to the Collector that in view of the water scarcity, the petitioner could not run manufacturing of tiles and for a short while, that is, for about 15 days or so, he used salt grinder to have some solace. It was submitted by him that immediately after the notice, this salt grinder was removed and on the date of the reply, there was no grinder.

6. After hearing the parties, learned Collector, vide his order dated 13th May, 1994 held that the petitioner was misusing the land for long many years, he also found that change of user was without permission and amounted to breach of the condition. He accordingly directed resumption of the said land. Being aggrieved by the said

order, the petitioner filed Revision No. SRD-Jamin-RJT-42-1994, which was dismissed by the Additional Principal Secretary [Appeals], vide his order dated 30.1.96. The petitioner being aggrieved by the orders passed by the Collector and confirmed by the State is before this Court.

7. Shri Mehta, learned counsel for the petitioner submitted that the petitioner innocently committed breach of the condition and after realizing the mistake and receipt of the notice, he had stopped alternative use of the land. His further submission is that the petitioner having suffered water scarcity could not proceed with the manufacture of tiles, therefore, had to switch to grinding of salt for a short period, therefore, orders passed by the Collector and the State deserve to be set side. It is also submitted by him that if the show cause notice provided for resumption of the land or payment of fine, then, present is a case for imposition of fine and not for cancellation. In the last, it was submitted that if the application stands cancelled, number of

the workers working with the petitioner would be unemployed and would go to vagrancy.

8. Learned counsel for the State on the other hand, has opposed the petition.

9. I have already quoted conditions no. 7,8 and 23 of the order of allotment. Condition no. 7 clearly provided that the land would be used for the specific purpose and for none else. The order of allotment also provided that with the permission of the Collector, the petitioner would be entitled to change the use. Unfortunately, in the present case, the petitioner for the reasons best known to him, did not make any application to the Collector for change of the use. Nothing prevented him from making an application to the Collector that because of the water scarcity, he be allowed to change the user for a short while or for long period. Even from the reply filed by the petitioner, it would clearly appear that the petitioner admitted his lapses. In a given case, once conditional allotment is made by the Government, then, conditions would bind the

parties. One cannot be allowed to take advantage of the best and leave the rest. In the present matter, the petitioner, on his own volition violated the conditions and thereby made himself liable for cancellation of allotment.

10. So far as the submission of the learned counsel for the petitioner in relation to imposition of fine or penalty is concerned, if the authority which had right to cancel the allotment or fine, then, the said authority was not required to give reasons for either of the punishment. On fair understanding of the notice to show cause, it would show that the notice was essentially that why land be not resumed with or without penalty. Right to cancel the allotment did vest in the Collector and in the circumstances of the case, if he thought to cancel the allotment, then, prima facie no wrong can be found.

11. On the last of the submission of the petitioner that in case of cancellation of the allotment, number of the labourers would become unemployed, this Court can only say that

misplaced sympathy and displaced anger would lead to bad law. In a case, where wrong is proved, then, the person committing a wrong must be penalized. One must note that the wrong does not pay, but one has to pay for the wrong. Taking into consideration the totality of the circumstances, I am of the considered opinion that the Collector so also the State were not unjustified in directing cancellation of the allotment. The petition deserves to and is accordingly dismissed. Rule is discharged. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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